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## TRANSMITTAL FORM

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Total Number of Pages in This Submission

Application Number 10/092,350

Filing Date March 7, 2002

First Named Inventor, John S. Formon et al.

Art Unit 3724

Examiner Name Omar Flores Sanchez

Attorney Docket Number 009242.00105

**ENCLOSURES (check all that apply)**

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Submission of Amended Appeal Brief in Response to Notice of Non-Compliant Appeal Brief
<b>Remarks</b>		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm	Banner & Witcoff, LTD.		
Signature			
Printed Name	Anthony W. Kandare		
Date	February 23, 2006	Reg. No.	48,830

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of:	Atty. Docket No.:	009242.00105
JOHN S. FORMON et al.		
Serial No.: 10/092,350	Group Art Unit:	3724
Filed: March 7, 2002	Examiner:	Omar Flores Sanchez
For: APPARATUS AND METHODS USABLE IN CONNECTION WITH DISPENSING FLEXIBLE SHEET MATERIAL FROM A ROLL	Confirmation No.:	7728

**SUBMISSION OF AMENDED APPEAL BRIEF IN  
RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF**

U.S. Patent and Trademark Office  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

In response to the Notice of Non-Compliant Appeal Brief mailed January 25, 2006, Applicants submit herewith an amended Appeal Brief containing a revised statement of the status of all claims, referencing cancelled claims 1-57 and 64-87. The cancellation of these claims was originally indicated in the claims appendix. In addition, the summary of claimed subject matter portion of the substitute appeal brief has been modified to refer to the specification by page and line number, in addition to paragraph number, for indications and explanations of the subject matter of the independent claim (claim 58) involved in the appeal. Except for the above-referenced changes, the amended Appeal Brief is identical to the original Appeal Brief filed on November 18, 2005.

It is believed that no fee is required for this submission. If any fees are required the Commissioner is authorized to debit our Deposit Account 19-0733, accordingly.

Respectfully submitted,

Dated: February 23, 2006

By: Anthony W. Kandare  
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Registration No. 48,830

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of:	Atty. Docket No.:	009242.00105
JOHN S. FORMON et al.		
Serial No.: 10/092,350	Group Art Unit:	3724
Filed: March 7, 2002	Examiner:	Omar Flores Sanchez
For: APPARATUS AND METHODS USABLE IN CONNECTION WITH DISPENSING FLEXIBLE SHEET MATERIAL FROM A ROLL	Confirmation No.:	7728

**AMENDED APPEAL BRIEF UNDER 37 CFR § 41.37**

U.S. Patent and Trademark Office  
220 20<sup>th</sup> Street S.  
Customer Window, Mail Stop Appeal Brief-Patents  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Sir:

This is an amended appeal brief pursuant to 35 U.S.C. § 134 in support of Appellants' September 8, 2005 notice of appeal. The appeal is taken from the final office action mailed July 6, 2005. We previously authorized the Commissioner on November 8, 2005 to charge the \$500.00 fee to deposit account no. 19-0733 for filing the original appeal brief filed on the same date. It is believed that no additional fees are due in connection with this amended appeal brief. However, if a fee is due, the Commissioner is authorized to charge such a fee to deposit account no. 19-0733.

**I. Real party in interest.**

The owner of this application, and the real party in interest, is Georgia-Pacific Corporation.

**II. Related appeals and interferences.**

Appellants are unaware of any appeals or interferences related to the subject appeal.

### **III. Status of Claims**

Claims 1-57 and 64-87 have been cancelled. Claims 58-63 are pending and are included in the adjoining claims appendix. Claims 58-63 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,106,684 to Hartbauer et al. (Hartbauer) in combination with U.S. Patent No. 5,257,748 to Morizzo (Morizzo). Appellants hereby appeal the rejection of all pending claims 58-63.

### **IV. Status of amendments.**

All prior amendments in this case have been entered.

### **V. Summary of claimed subject matter.**

In referring herein to various portions of the specification and drawings in order to explain the claimed invention, Appellants do not intend to limit the claims; all references to the specification and drawings are illustrative unless otherwise explicitly stated. All references to specific paragraphs refer to the specification as originally filed.

The present invention as recited in independent claim 58 pertains to a flexible sheet material dispenser that affords advantages through use of a bias-driven transfer mechanism and a control means for electrically activating an actuator of the transfer mechanism. The transfer mechanism includes a transfer link and the actuator. When electrically activated, the actuator drives the transfer link to a position that permits the transfer member to move under the bias toward a feed nip of the dispenser (to move a leading segment of sheet material into the nip).

Exemplary embodiments of the subject matter of claims 58-63 are clearly illustrated in Figures 16A-16E of the application drawings and are described in paragraphs 112-116 (page 43, line 21 to page 45, line 10) of the specification as originally filed, which illustrate an example transfer mechanism as recited in independent claim 58. As shown in Figure 16A, pivotally mounted transfer bar 200 (transfer member) is braced against the inside front surface of closed cover 13' (cover recited in claims 62 and 63) and biased rearward by spring 201 (bias) toward feed nip 37'. Transfer link 205 holds transfer bar 200 in a set position away from feed nip 37'. Transfer link 205 is biased by spring 207 into a position for holding transfer bar 200 in the set position.

Thus, the transfer mechanism is set to operate under potential energy stored in spring 201 to mechanically feed a web sheet in the feed nip. Transfer motor 199 (actuator) enables release of the potential energy by rotating transfer link 205 against the pull of spring 207 to free transfer bar 200 so that it can rotate under the bias of spring 201 toward feed nip 37'. Hence, motor 199 actuates the transfer mechanism, which operates under potential energy stored in spring 201, to mechanically feed a web sheet into the feed nip. As discussed on page 37, line 1 to page 38, line 3 of the specification (paragraphs 97 and 98) and illustrated in Figures 12 and 13, the motor 199 is actuated via the control of a control mechanism (control means) that includes microprocessor 115 when the absence of sheet material is detected. The absence of sheet material can be detected via a detection system that includes sensors 111, 113, which detect the absence of web 18 within discharge chute 41.

The present invention of independent claim 58 can provide many of the same advantages as a dispenser having a motor powered transfer mechanism, such as the dispenser discussed in the specification at paragraph 17 of co-pending commonly assigned application serial no. 09/604,811, while requiring less energy. Application serial no. 09/604,811 describes an electric motor powered transfer mechanism that provides several advantages over the prior art. In particular, as compared to purely mechanical mechanisms (such as taught by Hartbauer), a motor-driven transfer mechanism facilitates electrical activation of a transfer operation upon detection of an absence of sheet material within the drive mechanism to thereby increase reliability and avoid simultaneous dispensing from two rolls. In addition to these advantages, the utilization of a transfer link and an electrically activated actuator that moves the transfer link according to claim 58 can require less motor power (and hence electrical energy) as compared with a motor driven transfer mechanism having a motor that drives the transfer member.

As illustrated by the exemplary embodiments, a transfer mechanism of a dispenser according to independent claim 58 can be electrically activated to perform a transfer operation, but can actually perform the transfer operation using stored potential energy (bias). Thus, embodiments according to independent claim 58 do not require an electrical drive to power the transfer operation.

## **VI. Grounds of rejection to be reviewed on appeal.**

The grounds of rejection for review are the rejections of claims 58-63 under 35 U.S.C. §103(a) over U.S. Patent No. 4,106,684 to Hartbauer et al. (Hartbauer) in combination with U.S. Patent No. 5,257,748 to Morizzo (Morizzo).

## **VII. Argument**

### **A. Claims 58-63**

The final office action mailed July 6, 2005 (Office Action) rejected claims 58-63 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hartbauer in view of Morizzo. These rejections are improper for at least the reasons discussed below.

In order establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), three criteria must exist: 1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings; 2) there must be a reasonable expectation of success; and 3) the prior art reference(s) must teach or suggest all the claim limitations. *See* MPEP § 706.02 (j); *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991).

#### *1. The proposed modification to Hartbauer in view of Morizzo.*

The Office Action proposes to modify the manually-driven paper towel dispenser of Hartbauer in view of the batcher-type, sheet material winding apparatus of Morizzo used for textile manufacturing operations. As discussed below, there is no motivation or suggestion in the references themselves or in the knowledge generally available to one of ordinary skill in the art to make the proposed modifications. As further discussed below, the motivations asserted in the Office Action do not exist, and the proposed modifications would replace or render superfluous intended functionality of the Hartbauer dispenser.

Hartbauer discloses a paper towel dispenser having a transfer means and a “manually operable means operatively associated with the sheet material feed means to dispense” sheet material. Emphasis added. Hartbauer, col. 1, lines 67-68. The Hartbauer transfer mechanism relies upon manual activity to operate and includes a transfer bar 118 connected to a cam

follower 124, which are both biased in a counter-clockwise direction by coil spring 126 toward engagement with the feed nip. (*See* Hartbauer, col. 5, lines 34-54 and Figs. 3, 7 and 8). The cam follower 124 follows cam element 104 and guides the position of transfer bar 118. The cam follower 124 is urged by coil spring 126 toward into an internal pocket or depression formed by raised cam portion 106. (*See* Hartbauer, col. 7, lines 32-35). When cam follower 124 enters the depression of raised cam portion 106, it permits transfer bar 118 to move toward rollers 12 and 14 that form the feed nip.

Hartbauer relies on user operation of a handle 18 to translate motion transfer means 28A into contact with mechanical linkages that eventually rotate cam element 104 and permit cam follower 124 to move toward the internal pocket or depression of raised cam portion 106. As such, movement of motion transfer means 28A (referred to as an ‘actuator’ in the Office Action) is tied to movement of the driving system for the feed mechanism (i.e., movement of handle 18) and relies on several mechanical linkages for actuation of the transfer mechanism. This contrasts starkly with electrical activation of an actuator for driving a transfer link to a release position as recited in claim 58 or the microprocessor control system of Morizzo.

Morizzo discloses a batcher-type sheet material winding apparatus used for textile manufacturing, which includes a rotating cutting blade that shears feed sheet material when a core is fully wound. (*See* Abstract). Morizzo teaches the use of an electric drive motor to rotate an arm assembly 268 to which an orbital cutting blade 266 is attached (*see* Fig. 11) and a microprocessor to control operation of the apparatus.

The Office Action proposes to replace or render superfluous the complex mechanical linkages of the manually-driven Hartbauer dispenser, which provide automatic transfer functionality and reduce paper towel wastage, in view of the textile manufacturing apparatus of Morizzo to include a drive motor and a microprocessor control mechanism.

2. *The Office Action fails to provide a motivation to modify the manually-driven paper towel dispenser of Hartbauer according to the microprocessor-controlled, batch-type winding apparatus of Morizzo used for textile fabric manufacturing.*

With regard to the first of the three criteria, the Office Action does not establish a *prima facie* case of obviousness, at least because there is no motivation or suggestion to combine the manually-driven paper towel dispenser of Hartbauer with the microprocessor controlled, textile-

winding apparatus of Morizzo. The Office Action asserts that lines 18-19 of the Abstract of Morizzo provide the required motivation, which simply states, “a microprocessor automatically controls all apparatus operations” of the Morizzo apparatus. However, the mere existence of a microprocessor in a textile-winding apparatus fails to suggest any motivation to modify the manually-driven paper towel dispenser of Hartbauer to include a microprocessor-controlled control mechanism as proposed in the Office Action.

The Office Action further states that the proposed modification to Hartbauer would have been obvious “in order to obtain [a] device that automatically controls all apparatus operations reducing the waste material.” Office Action, page 2. However, Hartbauer already provides for automatic control of its transfer operation via mechanical mechanisms, which already provide the advantage of reducing sheet material waste. Hartbauer specifically notes that its manually-driven control mechanism operates automatically and it reduces paper towel waste in the form of paper towel remaining on the stub roll. In particular, Hartbauer states, “it will be appreciated that without an automatic transfer mechanism the attendant will be required to manually start the end of the new roll in the feed roller nip regardless of whether or not all of the paper toweling on the stub roll has been used up.” Hartbauer, col. 3, lines 56-61. Thus, there is no motivation to modify the Hartbauer dispenser as noted in the Office Action to provide what it already includes (an automatic control mechanism) or for the stated purpose that it already provides (to reduce sheet material waste).

The Office Action suggests combining Hartbauer with the control means and motor of Morizzo. However, Morizzo provides no teaching whatsoever regarding a transfer member used to initiate feed from a new roll, and no suggestion of how a motor and control means could be advantageously implemented in such a roll feed *transfer* system. Further, Morizzo provides no teaching whatsoever regarding a detection system for detecting an absence of sheet material within a feed mechanism, and no suggestion of how a control means could be advantageously implemented in a roll feed transfer system to detect an absence of sheet material within a feed mechanism.

Further, Hartbauer does not provide any indication that it would be desirable to implement a motor and electrical control means in its roll feed transfer system or a detection system for detecting an absence of sheet material within a feed mechanism, and it is entirely

unclear how these modifications could even be accomplished. The proposed modification of Hartbauer's device to provide the control means and motor of Morizzo amounts to an impermissible attempted hindsight reconstruction of the claimed invention.

The Federal Circuit has repeatedly stated that the limitations of a claim in a pending application cannot be used as a blueprint to piece together prior art in hindsight, *In re Dembicza*k, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999), and that the Patent Office should **rigorously** apply the requirement that a teaching or motivation to combine prior art references needs to be provided. *Id.* (emphasis added). As noted above, the Office Action uses impermissible hindsight to modify Hartbauer in view of Morizzo without providing the required suggestion or motivation to do so. There simply is no motivation for a person having ordinary skill in the art to modify the manually-driven paper towel dispenser of Hartbauer, which includes a transfer mechanism that reduces waste and operates automatically, according to the microprocessor control teachings of the production-level, textile winding apparatus of Morizzo.

As has been noted, it is unclear how the proposed modification of Hartbauer according to Morizzo could be accomplished, much less could have been obvious to one of ordinary skill in the art. At best, the combination would seemingly destroy or render superfluous the disclosed function and structure of Hartbauer's elaborate manually-driven mechanical system, including handle 18 and the mechanical linkages between motion transfer means 28A and cam follower 124 (referred to as a 'transfer link' in the Office Action), as well as the mechanical linkages between sensing arm 42 and cam follower 124.

For at least these reasons, Appellants respectfully submit that the Office Action improperly rejects claims 58-63.

3. *Even if improperly combined, the proposed combination of Hartbauer and Morizzo fails to teach suggest all the claim limitations.*

Moreover, a combination of Hartbauer and Morizzo as proposed would not result in the claimed invention. Presumably, such a hypothetical device would drive, with a motor, a transfer bar (rather than the blade of Morizzo) to drive a transfer operation. Such a hypothetical device also would presumably include the detection system of Hartbauer, which detects absence of a

stub roll or stub core in a dispensing position (see Fig. 10 – sensing arm 42 rotates forward upon stub core 22 dropping).

In contrast, the inventive dispenser of claim 58 provides electrical activation of an actuator that drives a transfer link to release a bias-driven transfer bar (rather than to drive a transfer bar). In particular, independent claim 58 recites a control means for electrically activating the actuator to drive the transfer link from a first position to a release position that permits the transfer member to move toward the feed nip under bias. These features are not taught or suggested by the proposed combination.

In addition, the inventive dispenser of claim 58 provides a detection system that detects an absence of sheet material within a feed mechanism rather than the absence of a stub roll. In contrast to the detection system recited in claim 58, which is expressly for detecting an absence of sheet material in a feed mechanism, Hartbauer discloses a sensing system for sensing the absence of a primary stub roll (independent of whether sheet material is still present in the feed mechanism). As shown in Figs. 3 and 10 of Hartbauer, a sensing arm 42 rests against the primary stub roll 22, which falls to the bottom of the dispenser when the sheet material is close to being depleted. At this time, sensing arm 42 falls downward and displaces activator pin 48 against follower member 52 to move it counterclockwise. (See col. 6, lines 32-44). This affects various mechanical linkages to ultimately engage cam element 104 to permit it to move as a user operates handle 18.

Thus, the proposed combination fails to teach or suggest at least the recited detection system, transfer mechanism and control means of independent claim 58. For these additional reasons, Appellants respectfully submit that the Office Action improperly rejects claims 58-63.

## B. Claim 62

In addition to the reasons discussed above for independent claim 58 from which claim 62 depends, Appellants respectfully submit the Office Action improperly rejects claim 62.

The inventive dispenser of claim 62 provides a pivotally mounted cover that can cooperate with the transfer link to enable the transfer operation while the cover is in a closed position and to disable it when it is in the open position. In particular, claim 62 recites a cover pivotally mounted for movement between an open position and a closed position, in which the

transfer link is biased toward the nip by a spring positioned between the cover and the transfer link.

The Office Action fails to make a *prima facie* case of obviousness for rejecting claim 62. In particular, the Office Action fails to identify, in the prior art, the recited cover and spring arrangement or to provide arguments for rejecting the claimed dispenser.

The cited prior art fails to teach or suggest the subject matter of claim 62. For instance, the transfer mechanism of Hartbauer is not operatively connected to its cover. Moreover, as shown in Figures 3 and 8, the spring 126 of Hartbauer is mounted between a support member 40 of the chassis and cam follower 124. Thus, Hartbauer clearly fails to teach or suggest the inventive dispenser of claim 62. Morizzo fails to overcome the deficiencies of Hartbauer with respect to claim 62.

Accordingly, Appellants respectfully submit that the Office Action improperly rejects claim 62.

### C. Claim 63

In addition to the reasons discussed above for independent claim 58 and dependent claim 63, from which claim 63 depends, Appellants respectfully submit the Office Action improperly rejects claim 63.

As noted above with respect to claim 62, the inventive dispenser of claims 62 and 63 provides a pivotally mounted cover that can cooperate with the transfer link to enable operation of the transfer mechanism while the cover is in a closed position and to disable it when it is in the open position. Further, claim 63 recites that the transfer link is pivotally mounted to fall away from the feed nip under gravitational force upon the cover being moved from the closed position to the open position.

As with claim 62, the Office Action fails to make a *prima facie* case of obviousness for rejecting claim 63. In particular, the Office Action fails to identify, in the prior art, the recited transfer link arrangement or to provide arguments for rejecting the recited arrangement.

The cited prior art fails to teach or suggest the subject matter of claim 63. For instance, the transfer bar of Hartbauer is not operatively connected to its cover and does not appear to be mounted to fall away under gravitational force when the cover is opened. Thus, Hartbauer

clearly fails to teach or suggest the inventive dispenser of claim 63. Morizzo fails to overcome the deficiencies of Hartbauer with respect to claim 63.

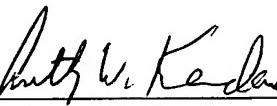
Accordingly, Appellants respectfully submit that the Office Action improperly rejects claim 63.

**Conclusion**

For all of the foregoing reasons, Appellants respectfully submit that the final rejections of claims 58-63 are improper. Reversal of the rejections and passage of the application to allowance are respectfully requested.

Respectfully submitted,

Date: February 23, 2006

By:   
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### **VIII. Claims appendix**

Claims 1-57: Cancelled

Claim 58: (Original) A dispenser for dispensing flexible sheet material from a roll, comprising:

a chassis defining a web discharge opening and a feed mechanism for advancing the sheet material to the discharge opening;

a detection system for detecting an absence of sheet material within said feed mechanism;

a transfer mechanism for contacting a leading segment of sheet material extending from a roll and moving said sheet material into a feed nip of said feed mechanism, said transfer mechanism comprising:

a transfer member biased toward said feed nip and into contact with said leading segment of sheet material;

a transfer link movable between a first position wherein said transfer link retains said transfer bar away from said feed nip, against said bias, and a release position wherein said transfer link permits said transfer member to move toward said feed nip under said bias and into contact with said leading segment of sheet material; and

an actuator for driving said transfer link from said first position to said release position; and

control means for electrically activating said actuator to drive said transfer link from said first position to said release position in response to said detection system detecting an absence of sheet material within said feed mechanism.

Claim 59: (Original) The dispenser according to claim 58, further comprising a spring for biasing a said transfer link toward said first position.

Claim 60: (Original) The dispenser according to claim 58, wherein said transfer link is pivotally mounted for rotation between said first position and said release position.

Claim 61: (Original) The dispenser according to claim 58, wherein said activator comprises a motor.

Claim 62: (Original) The dispenser according to claim 58, further comprising a cover pivotally mounted to said chassis for movement between an open position and a closed position, and wherein said transfer link is, when said cover is in said closed position, biased toward said nip by a spring positioned between said cover and said transfer link.

Claim 63: (Original) The dispenser according to claim 62, wherein said transfer link is pivotally mounted to fall away from said feed nip under gravitational force upon said cover being moved from said closed position to said open position.

Claims 64-87: Cancelled.

**IX. Evidence appendix**

No additional evidence has been entered pursuant to 37 C.F.R. §§1.130, 1.131 or 1.132 for this application, nor has any additional evidence been entered by the Examiner and relied upon by the Appellants for this appeal.

**X. Related proceedings index**

As noted above in section II, Appellants are unaware of any appeals or interferences related to the subject appeal. As such, there are no decisions of related proceedings to provide for the subject appeal.